

IN THE DRAWING

Included in an Appendix hereof is an annotated sheet showing changes as well as a replacement sheet. The changes involve the reference numeral 24 with new designations as -- 24A -- and -- 24B -- instead of just plain "24" in two instances where the same reference numeral is associated with different signal lines. Approval is requested.

REMARKS

This Amendment and Request for Reconsideration is filed in response to the Office Action of **September 26, 2005**, in which claims 1-16 were rejected, the specification was objected to and the drawings were objected to by the Examiner.

Regarding the objection to the drawings, an amendment thereto has been made above and the reference numeral 24 has been changed in both Figures 1 and 2 to differentiate between the two instances shown in both Figures 1 and 2 by naming one signal line 24A and the other 24B. A replacement sheet has been included in the Appendix which incorporates the proposed changes and which complies with 37 CFR 1.84. In both Figures 1 and 2 the first reference numeral "24" has been replaced with -- 24A --. The second instance of the reference numeral "24" in both Figures 1 and 2 has been replaced by -- 24B --. It is believed that this complies with the Examiner's requirement and withdrawal of the objection is therefore requested.

* * *

Regarding the objection to the specification pertaining to the grammatical errors on page 4, line 34 and page 7, line 3, these have been corrected as suggested by the Examiner. In addition, several other informalities have been corrected.

Withdrawal of the objection is requested.

* * *

Regarding the statutory subject matter rejection of claims 9-11, each of these claims has been amended to specify that the program is a computer program that is embodied in a computer readable medium. Therefore, it is clear that the claimed programs are tangibly embodied in a physical medium, and coded on a computer-readable medium and clearly recited as a computer program complying with 35 U.S.C. §101.

Withdrawal of the 35 U.S.C. §101 rejection of claims 9-11 is requested.

* * *

Regarding the novelty rejection of claims 1, 2, 4, 5, 8 and 12-16 under 35 U.S.C. §102(b) as being anticipated by Salin et al (U.S. 6,370,390), Applicant believes that even though there are some similarities between the subject matter of claim 1 and what is disclosed in the Salin et al reference, there are some major differences.

Salin et al at column 8, lines 1-7 is also concerned with reducing unnecessary signaling and messaging. However, according to Salin et al, a preemptive approach is taken to avoid sending any message at all by using other types of information available in the network treated by Salin et al, i.e., the GSM network. In short, Salin et al requires the inclusion of a parameter signaling to the gateway mobile switching center for a short message service not to attempt to send a short message in case it determines that the presence of the target mobile station is such that it cannot be reached which it “knows” already due to the nature of the mobile radio network.

In contrast, the present invention actually is founded on receiving a notification about an unsuccessful delivery attempt of a message. In the second step of claim 1, a presence service is subscribed to so that the presence service can be used in the third step to check “availability information” about the mobile terminal device so as to be able to attempt a delivery of the message in the fourth step in accordance with the result of the checking. The Salin et al reference doesn't take this approach even though it is also concerned with reducing unnecessary signaling and messaging.

Furthermore, the “availability information” claimed in claim 1 is further specified in the last paragraph of claim 1 as comprising information selected from a group of: type of message, size of message, data content, location of the mobile terminal device and willingness of a user of the mobile terminal device to receive a message. The Salin et al reference is not concerned with a presence service of this kind which is maintained by such a presence service and is rather concerned with the

availability knowledge provided by the mobile network in the sense of being in radio contact. In other words, the GSM network is of course able to determine availability of a mobile station but only in the sense of the reachability provided by the combination of the HLR/VLR and the mobile radio interface indicating availability to receive and transmit over the radio interface whether in a home location or a visitor location. It does not imply a presence service of the kind claimed in claim 1 where availability information includes information selected from a differentiated group comprising different types of information.

Therefore, the novelty rejection of claims 1, 2, 4, 5, 8 and 12-16 is inapplicable and withdrawal thereof is requested.

* * *

Regarding the obviousness rejection of claim 3, it depends from claim 1 which has already been discussed above in connection with the novelty rejection and is at least patentable for the reasons given above.

Withdrawal of the 35 U.S.C. §103(a) rejection of claim 3 is therefore requested.

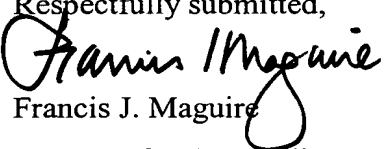
* * *

Regarding the obviousness rejection of claims 6 and 7, Applicant believes that the Rooke et al reference (U.S. 6,678,361) does not teach that a pilot message is rejected and therefore this may not be considered as an unsuccessful delivery attempt.

Withdrawal of the 35 U.S.C. §103(a) rejection of claims 6 and 7 is requested.

* * *

The objections and rejections of the Office Action of September 26, 2005, having been obviated by amendment or shown to be inapplicable, withdrawal thereof is requested and passage of claims 1-16 to issue as amended is requested.

Respectfully submitted,

Francis J. Maguire
Attorney for the Applicant
Registration No. 31,391

FJM/djc
Ware, Fressola, Van Der Sluys & Adolphson LLP
755 Main Street, P.O. Box 224
Monroe, CT 06468
(203) 261-1234

APPENDIX

Annotated Sheet Showing changes

10/5/2,101
9/5-6-54

1/1

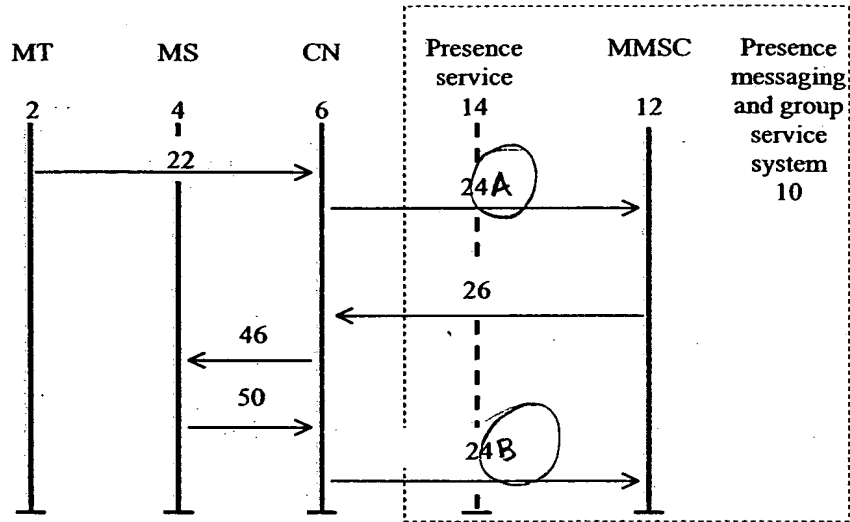


FIG. 1

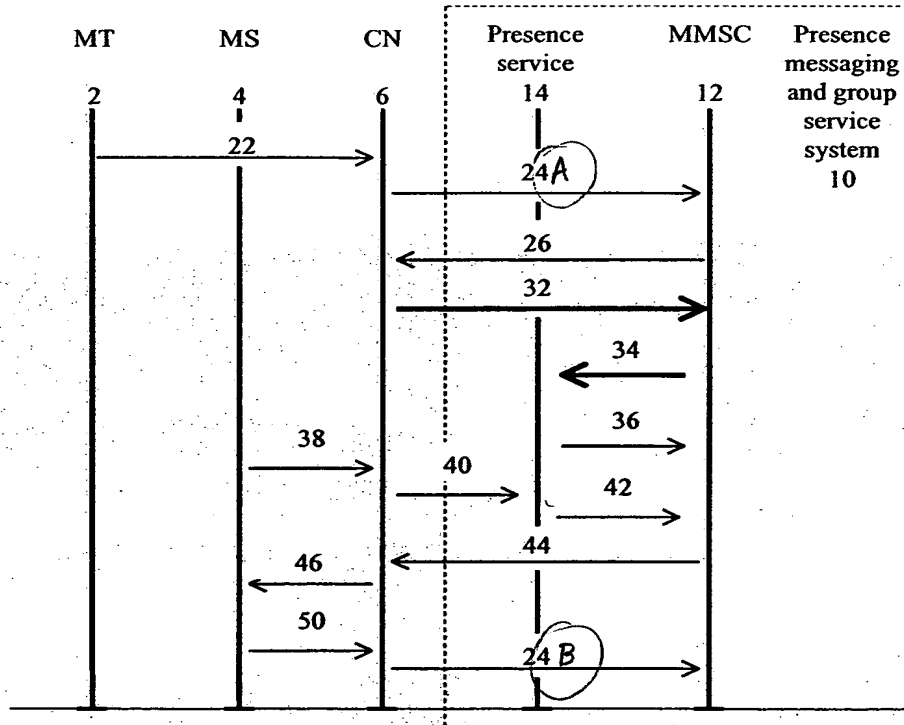


FIG. 2